

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ROBERT A. AND KATHLEEN J.</b>	:	<b>ORDER</b>
<b>GRABOWSKI</b>	:	<b>DTA NO. 817414</b>
	:	
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law for	:	
the Year 1989.	:	

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Petitioners, Robert A. and Kathleen J. Grabowski, 2611 Sabin Way, Spring Hill, Tennessee 37174, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1989. A hearing on the petition was scheduled before Presiding Officer Arthur Johnson at the offices of the Division of Tax Appeals, Syracuse District Office, 333 East Washington Street, Syracuse, New York 13202 on Thursday, October 26, 2000 at 1:30 P.M. Petitioners did not appear at the hearing. On December 7, 2000, a default determination denying the petition was issued by Presiding Officer Johnson.

On December 18, 2000, petitioners filed a request that the December 7, 2000 default determination be vacated. The Division of Taxation appearing by Barbara G. Billett, Esq. (Andrew S. Haber, Esq., of counsel) filed a response in opposition to petitioners' request on December 26, 2000.

***FINDINGS OF FACT***

1. On November 22, 1999, petitioners filed a petition challenging an assessment of personal income tax under Article 22 of the Tax Law for the tax year 1989. The assessment was

the result of the Division of Taxation's determination that petitioners had failed to file a tax return for the 1989 tax year and was based upon information furnished to the Division of Taxation by the Internal Revenue Service. Petitioners are unable to prove that they had filed a timely New York State return or paid the tax due. However, petitioners complain of the amount of time it took for the Division of Taxation to determine that no return had been filed and to assert that tax was due. Petitioners assert that because of this delay penalty and interest should be waived and the amount of tax should be reduced by 50 percent.

2. A hearing in this matter was scheduled for October 26, 2000 in Syracuse, New York. A Notice of Small Claims Hearing was mailed on September 18, 2000 to advise petitioners of the impending hearing.

3. On October 26, 2000, Presiding Officer Arthur Johnson called the ***Matter of Robert A. and Kathleen J. Grabowski*** for hearing. Petitioners did not appear at the hearing, request an adjournment of the hearing or otherwise communicate with the Division of Tax Appeals. On December 7, 2000, Presiding Officer Johnson issued a default determination denying the petition of Robert A. and Kathleen J. Grabowski.

4. On December 18, 2000, petitioners filed a request to vacate the default determination. The request states that petitioners' daughter was having labor pains in conjunction with the eventual birth of their first grandchild who was born on November 8, 2000. The request does not address the merits of petitioners' case

5. In its response, the Division of Taxation argues that petitioners have shown neither an excuse for their default nor a meritorious case. The Division points out that petitioners did not attempt to contact the Division of Tax Appeals either on the date of the hearing or at any other time before the default determination was issued. Moreover, the Division points out that

petitioners admit that they have no proof that they filed a timely return with payment and are attempting to meet their burden of proof merely by asserting a defense of laches.

### ***CONCLUSIONS OF LAW***

A. Section 3000.13(d)(2) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.13[d][2]) provides: “[i]n the event a party or the party’s representative does not appear at a scheduled hearing and an adjournment has not been granted, the presiding officer shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear.”

Section 3000.13(d)(3) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.13[d][3]) provides: “[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case.”

B. There is no doubt on the record presented in this matter that petitioners did not appear at the scheduled hearing or obtain an adjournment. Therefore, the presiding officer correctly granted the Division’s motion for default pursuant to 20 NYCRR 3000.13(d)(2) (*see, Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995; *Matter of Morano’s Jewelers of Fifth Avenue*, Tax Appeals Tribunal, May 4, 1989). Once the default order was issued, it was incumbent upon petitioners to show a valid excuse for not attending the hearing and to show that they have a meritorious case (20 NYCRR 3000.13[d][3]; *see also, Matter of Zavalla, supra; Matter of Morano’s Jewelers of Fifth Avenue, supra*).

C. I do not find petitioners’ excuse for not appearing at their hearing particularly convincing. There is nothing which would indicate that petitioners had any plans or made any preparations to travel from Tennessee to New York for the hearing. Petitioners made no effort to

contact the Division of Tax Appeals to seek an adjournment of the hearing. Moreover, petitioners made no effort to contact the Division of Tax Appeals until after a default determination had been issued. Accordingly, I find that their excuse does not establish reasonable cause for their failure to appear.

D. Petitioners' request to vacate the default determination does not address the merits of their case. In their petition, they indicate that they are unable to prove that they filed a timely return. They give no details of any steps they may have taken to obtain proof. Their complaint that it took the Division of Taxation a long time to catch them does not establish a meritorious case. Accordingly, I find that petitioners have not established that they have a meritorious case.

E. The request of Robert A. and Kathleen J. Grabowski to vacate the default determination issued December 7, 2000 is denied.

DATED: Troy, New York  
March 15, 2001

/s/ Andrew F. Marchese  
CHIEF ADMINISTRATIVE LAW JUDGE